

REMARKS

Claims 1-30 are pending in the application. Of the pending claims, claims 1-30 are rejected. Applicant respectfully requests reconsideration of the application.

Claim Amendments

Claims 1-5, 7-8, 13, 15-17, 20, and 25-30 have been amended. No new matter has been added.

Claim Rejections – 35 U.S.C. §112, Second Paragraph

The Examiner has rejected claims 1-17, 24-27, and 29-30 under 35 U.S.C. §112, second paragraph. Specifically, the Examiner has indicated that these claims are indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. All of the claim amendments required by the Examiner have been corrected to overcome the rejections based on 35 U.S.C. §112, Second Paragraph. No new matter has been added.

Claim Rejections – 35 U.S.C. §102

The Examiner Failed To Show That Applicant's Claims Are Anticipated

For a claim to be rejected under this statute, it must be anticipated by the prior art. Anticipation occurs when every element of the claimed invention is found in a single prior art reference.¹ In addition to including every element of the claimed invention, the prior art reference must also “be enabling and describe the applicant’s claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.”² In other words, for the prior art reference to anticipate the claimed invention, all of the

¹ *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987); *see also*, *Electro Med. Sys. v. Cooper Life Sciences*, 34 F.3d 1048 (Fed. Cir. 1994) (stating, “[a]nticipation under 35 U.S.C. §102 (b) requires the presence in a single prior art disclosure of each and every element of a claimed invention. . .”); *General Elec. Co. v. Hoechst Celanese Corp.*, 740 F.Supp. 305, 313 (Del. 1990) (stating that “[i]n order to anticipate a later claim, a single prior source must contain all of the essential limitations of the claim”).

² *In re Paulsen*, 30 F.3d 1475, 1479 (Fed. Cir. 1994).

elements in the claim must be found in a single piece of prior art “in exactly the same situation and united the same way to perform the identical function. . . .”³

A. Applicant’s Claims 1-16 and 28-30 are not anticipated by U.S. Pat. No. 7,025,073 issued to Holub (“Holub”).

1. Claims 1-5

Here, *Holub* does not anticipate Applicant’s claims 1-5. Specifically, *Holub* does not disclose every element in exactly the same situation and united in the same way to perform the identical function of Applicant’s claims 1-5. On page 4 of the Examiner’s Office Action, the Examiner asserts that *Holub* includes all of the limitations of Applicant’s claims 1-5. Applicant respectfully disagrees with Examiner’s comparison of Applicant’s claim elements to the elements in *Holub*.

First, the Examiner equates the first and second flexible framing rods of Applicant’s independent claim 1 to *Holub*’s poles (24). This equation of Applicant’s first and second flexible framing rods to *Holub*’s poles (24), however, is inaccurate. Specifically, *Holub* teaches poles (24) that are “typically straight.”⁴ This differs from Applicant’s first and second flexible framing rods that are formed substantially into an *inverted u-shape*. The straight poles in *Holub* are not equal to the inverted u-shape rods disclosed in Applicant’s claim 1. Further, Applicant’s independent claim 1 teaches two (2) flexible framing rods, whereas, *Holub* teaches three (3) poles (24).⁵ This difference clearly shows that the *Holub* reference cannot and does not anticipate Applicant’s independent claim 1. Not all elements in Applicant’s claim 1 and *Holub* are in the exact same situation and united in the same way to perform the identical function.

Second, the Examiner equates Applicant’s claim 1 limitation of non-removably connecting the two ends of the first and second flexible framing rods to the flexible skin to *Holub*’s poles (24) being non-removably connected to anchoring (36) to the ground.⁶ This is not an accurate equation of the elements in Applicant’s claim 1 to *Holub*. Nowhere in any of

³ *Sandisk Corp. v. Lexar Media, Inc.*, 91 F.Supp.2d 1327, 1336 (N.D. Cal. 2000). See also, *In re Arkley*, 455 F.2d 586, 587 (P.App.Cir. 1972) (stating that “rejections under 35 U.S.C. §102 are proper only when the claimed subject matter *is* identically disclosed or described in the ‘prior art’”) (emphasis in original).

⁴ *Holub* Col. 2, line 67.

⁵ *Holub* Col. 2, line 64.

⁶ Examiner’s Office Action p. 4.

Applicant's claim 1 or claims 2-5 is there a limitation regarding the flexible framing rods being non-removably connected to anchoring to the ground.

Third, the Examiner asserts that that the tent (20) has one section of the webbing loop (52) disclosed in *Holub* that is non-removably connected to the two ends (24A) of the pole (24) and that this is equivalent to Applicant's claims. This comparison between *Holub* and Applicant's claims is erroneous for several reasons. First, the elements described by the Examiner do not fit together in the *Holub* reference. Specifically, element 24A of *Holub* refers to a prior art pole that *Holub* distinguishes from its invention. It is not an end of the pole (24) described in *Holub*. Second, the section of the webbing loop (52) referred to by the Examiner has no equivalent in the Applicant's claims. Third, the tent (20) is not non-removably connected to the poles (24) as in Applicant's claim 1. Rather, the poles (24) in *Holub* are manually extended through the sleeves (26) of the tent (20) by the user each time the tent is assembled or disassembled.⁷ This is the opposite of having the flexible skin non-removably connected to the ends of the flexible framing rods.

Finally, Applicant's dependent claims 3 and 5 are nowhere disclosed in *Holub* as would be required to uphold an anticipation rejection. *Holub* does not disclose sleeves that made of substantially the same material as the tent as in claim 3. Additionally, there is no disclosure in *Holub* of the sleeves being intermittently attached along the tent as in claim 5. Because these limitations are not disclosed in *Holub*, claims 3 and 5 cannot be anticipated.

2. Claims 7-8 and 15-16

Here, *Holub* does not anticipate Applicant's claims 7-8 and 15-16. Specifically, *Holub* does not disclose every element in exactly the same situation and united in the same way to perform the identical function of Applicant's claims 7-8 and 15-16.

The Examiner indicates that *Holub* discloses third and fourth flexible framing rods as in Applicant's claims 7-8 and 15-16. In fact, however, *Holub* only discloses three poles (24) in its disclosure.⁸ The Examiner inaccurately equates element 28 of *Holub* with Applicant's fourth flexible rod. In *Holub*, element 28 is a hook that attaches the front pole that extends

⁷ *Holub* Col. 3, lines 54-57.

⁸ *Holub* Col. 2, lines 63-64 ("The tent 20 includes three poles 24.")

across the front of the tent to the sidewalls of the tent.⁹ The hook (28) disclosed in *Holub* is not equivalent to the fourth flexible rod disclosed by Applicant in claims 8 and 16.

Further, *Holub* does not disclose third and fourth flexible framing rods crossing at an apex as disclosed in Applicant's claims 7-8. As already stated, *Holub* does not include a fourth pole. Moreover, the third pole (24) disclosed in *Holub* extends across the front of the tent and is attached to the sidewalls of the tent.¹⁰ This is not a crossing at an apex. An apex is defined as "the uppermost point."¹¹ As can be seen in Fig. 2 of *Holub*, the third pole crosses at a point below the apex of the first and second poles. Moreover, as described above, the tent (20) disclosed in *Holub* is not non-removably connected to the poles. Rather, the poles (24) in *Holub* are removable from the tent (20) and are inserted into the sleeves of the tent (20) by the user.¹²

Regarding claims 15-16, *Holub* does not disclose third and fourth flexible framing rods crossing each other. *Holub* does not disclose a fourth pole as in Applicant's claim 16. Additionally, the tent (20) disclosed in *Holub* is removable from the poles (24). As already stated, the poles (24) are inserted to the sleeves of the tent (20) by the user.¹³ Because of these differences between *Holub* and Applicant's claims 7-8 and 15-16, *Holub* does not anticipate Applicant's invention.

3. Claims 6 and 9

The Examiner has indicated that Applicant's claims 6 and 9 are anticipated by *Holub*. Applicant respectfully disagrees with this assertion. Specifically, claims 6 and 9 of Applicant's invention disclose a fly and a fly framing rod. While *Holub* describes a fly (22) it does not disclose a fly framing rod. Because there is no fly framing rod disclosed, the other elements of Applicant's claims 6 and 9 are also not disclosed. In particular, there is no mention of a fly framing rod being non-removably connected to the fly. As such, Applicant's claims 6 and 9 are not anticipated by *Holub*.

⁹ *Holub* Col. 3, lines 26-28. ("The tent 20 includes an additional pole 24 that extends across the front of the tent 20 and which is attached to sidewalls of the tent by hooks 28.")

¹⁰ *Holub* Col. 3, lines 26-28.

¹¹ "apex." Merriam-Webster Online Dictionary. 2009. Merriam-Webster Online. 21 August 2009
<<http://www.merriam-webster.com/dictionary/apex>>

¹² *Holub* Col. 3, lines 54-57.

¹³ *Id.*

4. Claim 12

The Examiner has indicated that claim 12 is anticipated by *Holub*. *Holub*, however, does not teach all of the elements of Applicant's claim 12. Specifically, claim 12 is a dependent claim based on claim 7. Claim 7 requires a third flexible framing rod where the third flexible framing rod crosses the first and second framing flexible rods at the apex of the first and second rods. As stated above, *Holub* does not teach a third pole crossing first and second poles at the apex. Moreover, *Holub* does not teach that the poles move independently of each other as required by Claim 12. As such, *Holub* cannot anticipate Applicant's claim 12.

5. Claim 13

The Examiner has stated that claim 13 is anticipated by *Holub*. The elements of claim 13, however, are not taught by *Holub*. Specifically, claim 13 is a dependent claim based on claim 7. Claim 7 requires a third flexible framing rod where the third flexible framing rod crosses the first and second framing flexible rods at the apex of the first and second rods. As stated above, *Holub* does not teach a third pole crossing first and second poles at the apex. Moreover, *Holub* does not specifically teach that the tent is made of nylon, polyester, or cotton. As such, *Holub* cannot anticipate Applicant's claim 13.

6. Claim 28

The Examiner has indicated that claim 28 is anticipated by *Holub*. Applicant respectfully disagrees with the Examiner's position for several reasons. First, *Holub* does not teach that the tent includes a storage device. It is not inherent that a tent would have a storage device. Additionally, as explained above, *Holub* does not teach that the tent (20) is non-removably connected to the ends of the poles (24). Rather, *Holub* teaches that the user of the tent must manually insert the poles (24) of the tent into the sleeves of the tent.¹⁴ Following this same reasoning, *Holub* does not teach that the tent automatically springs into shape when released from the storage device. Because *Holub* specifically states that the user must manually assemble the tent by placing the poles through the sleeves it cannot

automatically spring into shape.¹⁵ Therefore, there is no way that *Holub* anticipates Applicant's claim 28.

7. Claim 29

The Examiner has indicated that claim 29 is anticipated by *Holub*. Applicant respectfully disagrees with the Examiner's assertions. Specifically, the Examiner has said that the tent described in *Holub* is capable of being non-divisible. It is unclear from the Examiner's office action and the disclosure of *Holub* where this element is described in *Holub*. Additionally, there are other required elements of Applicant's claim 29 that are not disclosed in *Holub*. For example, as explained above with respect to claim 1, the tent disclosed in *Holub* is not non-removably connected to the poles. Rather, the poles must be manually connected to the tent by the user.¹⁶ These are different structural limitations between *Holub* and Applicant's invention that prevent *Holub* from anticipating Applicant's claim 29.

8. Claim 30

The Examiner has stated that claim 30 is anticipated by *Holub*. Applicant respectfully disagrees with the Examiner's indication. Specifically, the Examiner has said that the poles described in *Holub* are non-jointed. It is unclear from the Examiner's office action and the disclosure of *Holub* where this element is described in *Holub*. Additionally, there are other required elements of Applicant's claim 30 that are not disclosed in *Holub*. For example, as explained above with respect to claim 1, the tent disclosed in *Holub* is not non-removably connected to the poles. Rather, the poles must be manually connected to the tent by the user.¹⁷ These are different structural limitations between *Holub* and Applicant's invention that prevent *Holub* from anticipating Applicant's claim 30.

¹⁴ *Holub* Col. 3, lines 54-57.

¹⁵ *Holub* Col. 3, lines 54-62.

¹⁶ *Holub* Col. 3, lines 54-62.

¹⁷ *Holub* Col. 3, lines 54-62.

B. Applicant's Claims 1, 7-16 and 29-30 are not anticipated by U.S. Pat. No. 5,901,727 issued to Kramer ("Kramer").

1. Claims 1 and 29-30

The Examiner has indicated that *Kramer* anticipates Applicant's claims 1 and 29-30. Applicant respectfully disagrees with Examiner's position. Specifically, *Kramer* does not disclose all of the elements in exactly the same way as Applicant's claims 1 and 29-30.

In particular, *Kramer* does not disclose that the canopy is non-removably connected to the support rods. The Examiner does not indicate in the Office Action where in *Kramer* it is disclosed that the canopy is non-removably connected to the support rods. In fact, the *Kramer* reference discloses that the canopy is connected to the support poles by connectors (16) that cooperate with the poles to maintain the canopy in a dome-shaped configuration.¹⁸ Fig. 1 of *Kramer* shows the connectors (16) spaced along the poles (12 and 14) such that they can easily slide off to remove the canopy from the poles (12 and 14). This differs from Applicant's claim 1 where the flexible skin is not removed from the flexible framing rods. Therefore, *Kramer* does not anticipate Applicant's claim 1.

Moreover, the Examiner does not indicate in the office action where *Kramer* discloses that the canopy of the tent is non-divisible as in Applicant's claim 29, or where *Kramer* discloses that the support poles are non-jointed as in Applicant's claim 30. Because these elements are not disclosed in the *Kramer* reference, *Kramer* does not disclose every element of Applicant's claims 29 and 30. Therefore, *Kramer* does not anticipate Applicant's claims 29 and 30.

2. Claims 7-8

The Examiner has indicated that *Kramer* anticipates Applicants' claims 7-8. Applicant respectfully disagrees with the Examiner's assertion. Specifically, claims 7-8 require a third and fourth flexible framing rod that cross near the apex of the first and second flexible framing rods. The elements that the Examiner has argued are equivalent to Applicant's third and fourth flexible framing rods do not cross each other or the first and second flexible framing rods at its apex.

¹⁸ *Kramer* Col. 3, lines 21-23.

Fig. 13 specifically shows elements 70 and 74 crossing each other offset from their respective apexes. As explained above, the apex is the uppermost point of the curve. Fig. 13 of *Kramer* clearly shows the third and fourth poles (70 and 74) crossing the structure offset from the apexes of the first and second poles (68 and 72). Therefore, *Kramer* does not anticipate Applicant's claims 7-8 because not all limitations are disclosed.

3. Claim 11

The Examiner has indicated that *Kramer* anticipates Applicant's claim 11. Applicant respectfully disagrees with the Examiner's argument. In particular, claim 11 requires that the flexible framing rods be made of steel, spring wire, plastic rod, fiberglass or structural polymer material. In the Examiner's office action, she states that *Kramer* teaches the flexible framing rods are formed of flexible spring wires. It is unclear from both the Examiner's Office Action and the *Kramer* reference itself where this is disclosed in *Kramer*. There is no mention in *Kramer* of the material that composes the flexible support rods. Thus, *Kramer* does not anticipate Applicant's claim 11 because not all limitations are disclosed.

4. Claim 12

The Examiner has indicated that *Kramer* anticipates Applicant's claim 12 which requires that the flexible framing rods move independently of each other. Again, it is unclear from the Examiner's office action where in *Kramer* this is disclosed. There is no discussion in either the office action or the *Kramer* reference itself that the flexible support rods disclosed move independently of each other. Therefore, *Kramer* does not anticipate Applicant's claim 12.

5. Claim 13

The Examiner has stated that *Kramer* anticipates Applicant's claim 13. Applicant's claim 13 requires that the flexible skin be made of nylon, polyester, or cotton. While *Kramer* does disclose that the tent can be made of nylon, there is no mention of the tent being made of polyester or cotton. This is a requirement of Applicant's claim 13 that is not disclosed in *Kramer*. As such, claim 13 is not anticipated by *Kramer*.

6. Claim 14

The Examiner has stated that Applicant's claim 14 is anticipated by *Kramer*. Specifically, Applicant's claim 14 requires that the flexible skin of the fast-erecting portable structure is connected to at least one of the flexible framing rods near the intersection of the framing rods by a flexible tie. In contrast, the Examiner equates the flexible tie disclosed in Applicant's claim 14 with the hook (16) and inner ends of connector straps (108) disclosed in *Kramer*.

In *Kramer* the connector straps (108) connect a web structure to the interior of the canopy (10). This differs from the flexible tie disclosed in Applicant's claim 14 that connects the flexible skin to at least one flexible framing rod near the intersections of the flexible framing rods. Therefore, the connector strap (108) disclosed in *Kramer* does not anticipate the flexible tie disclosed in Applicant's claim 14.

7. Claims 15-16

The Examiner has asserted that *Kramer* anticipates Applicant's claims 15 and 16. Applicant's claims 15 and 16 are dependent claims based on independent claim 1 which is not anticipated by *Kramer*. Therefore, claims 15 and 16 should be allowed in dependent form because independent claim 1 is not anticipated by *Kramer*.¹⁹

C. Applicant's Claims 1-5, 11-14 and 28-30 are not anticipated by U.S. Pat. No. 5,370,145 issued to Wu ("Wu").

1. Claims 1-5

The Examiner has asserted that Applicant's claims 1-5 are anticipated by *Wu*. Applicant respectfully disagrees with this assertion because not all elements of Applicant's claims 1-5 are disclosed in *Wu*.

First, *Wu* does not disclose a flexible skin that is non-removably connected to two ends of first and second flexible framing rods where the two ends act as a base of the fast-erecting portable structure. Rather, as explained by the Examiner, the end corners of the tent disclosed in *Wu* are connected to tie members (23). The tie members (23) tie to the

¹⁹ See, *In re Johnson*, 589 F.2d 1070, 1080 (CCPA 1978).

frame at each corner to pull down on the sides of the tent panel (21).²⁰ The tie members (23) disclosed in *Wu* are not equivalent to the limitation in Applicant's claim 1 of the flexible skin being non-removably connected to the ends of the first and second flexible framing rods where the two ends of the flexible framing rods act as a base of the portable structure. *Wu* indicates that the tie members (23) are tied to the frame at each corner to downwardly and outwardly pull on the side panels.²¹ This disclose in *Wu* indicates that the side panels are removably attached to the frame by tying and untying the tie members (23). This is different than Applicant's claim 1 where the flexible skin is non-removably connected to the flexible framing rods. Therefore, *Wu* does not anticipate Applicant's claim 1.

Second, with regards to claims 2-4, *Wu* cannot anticipate dependent claims that are based on a non-anticipated independent claim.²² Because Applicant's independent claim 1 is not anticipated by *Wu*, dependent claims 2-4 are not anticipated by *Wu*.

Third, regarding claim 5, *Wu* does not teach that the sleeves are intermittently sewn into the tent. Rather, as seen in Fig. 1, the sleeves disclosed in *Wu* are one straight piece. They are not cut and intermittently sewn along the side of the tent. Additionally, claim 5 is a dependent claim based on non-anticipated claim 1. Therefore, *Wu* does not anticipate Applicant's claim 5.

2. Claims 11-14

The Examiner has indicated that Applicant's claims 11-14 are anticipated by *Wu*. Applicant respectfully disagrees with the Examiner's assertions because not all of the elements in Applicant's claims 11-14 are disclosed in *Wu*. First, Applicant's claims 11-14 are dependent claims based on claim 7 which discloses that the fast-erecting portable structure includes three flexible framing rods. *Wu* only discloses two flexible framing rods in its disclosure.

Second, with respect to Applicant's claim 11, *Wu* does not disclose that the frames (30 and 31) are made of steel, spring wire, plastic rod, fiberglass, or structural polymer material. *Wu* discloses that the frame (30 and 31) is a flat spring.²³ This differs from the

²⁰ *Wu* Col. 2, lines 4-6.

²¹ *Wu* Col. 2, lines 4-6.

²² See, *In re Johnson*, 589 F.2d 1070, 1080 (CCPA 1978).

²³ *Wu* Col. 2, line 50.

structural components which Applicant claims. A flat spring is not steel, spring wire, plastic rod, fiberglass, or structural polymer material. As indicated above, in order for a reference to anticipate a claim, it must disclose the exact same elements as the anticipated claim.

Third, *Wu* does not teach that the frames (30 and 31) move independently of each other as in Applicant's claim 12. It is unclear from the Examiner's Office Action and the *Wu* reference where this element is disclosed.

Fourth, *Wu* does not disclose the material of which the tent is made as in Applicant's claim 13. Again, it is unclear from the Examiner's Office Action where this element is disclosed.

Fifth, *Wu* does not teach that the tent is connected to at least one frame by a flexible tie. The Examiner equates an elastic string (29) in *Wu* with the flexible tie in Applicant's claim 14. The elastic tie (29) in *Wu* is used to fold up the tent for storage.²⁴ Elastic tie (29) is tied to elastic tie (28) so that the floor panel (22) is pulled toward the apex of the tent and stuffed between the side panels (21).²⁵ This is not equivalent to using a flexible tie to tie the flexible skin of the tent to one of the flexible framing rods. Thus, *Wu* does not anticipate Applicant's claim 14.

3. Claims 28-30

The Examiner has indicated that Applicant's claim 28 is anticipated by *Wu*. Specifically, the Examiner has stated that Applicant's claim 28 is anticipated by *Wu* because *Wu* describes a tent that "can be erected into a shape when the structure is released from (sic) the storage device."²⁶ Applicant respectfully disagrees with the Examiner's assertion that the disclosure in *Wu* anticipates Applicant's claim 28.

Applicant's claim 28 states that "when the fast-erecting tent is released from the storage device, the fast-erecting tent *springs into shape*."²⁷ Applicant's limitation that the fast-erecting tent "springs into shape" is different than *Wu*'s disclosure where the tent can be *erected* into a shape. Applicant's claim 28 indicates that as soon as the tent is released from its storage bad, it is upright and in shape. This is in contrast to the tent in *Wu* where erecting

²⁴ *Wu* Col. 2, line 7-10.

²⁵ *Id.*

²⁶ Examiner's Office Action page 7.

²⁷ Applicant's claim 28 (emphasis added).

the tent requires several steps including but not limited to un-tucking and un-tying pieces of the tent.²⁸ Thus, *Wu* does not anticipate Applicant's claim 28 because it does not disclose the tent automatically springing into shape.

The Examiner has indicated that *Wu* also anticipates Applicant's claims 29 and 30. It is unclear, however, from the Examiner's office action where it is disclosed in *Wu* that the tent is non-divisible as in Applicant's claim 29 and that flexible framing rods are non-jointed as in Applicant's claim 30. Therefore, because *Wu* does not disclose the limitations in Applicant's claims 29 and 30, Applicant's claims are not anticipated.

D. Applicant's Claims 17-19 and 21-23 are not anticipated by U.S. Pat. No. 4,085,873 issued to Schweitzer ("Schweitzer").

1. Claims 17-19

The Examiner has indicated that *Schweitzer* anticipates Applicant's claims 17-19. Applicant respectfully disagrees with the Examiner's position. Specifically, Applicant's claim 17 teaches a storage bag for storing the fast-erecting portable structure and includes a front sheet with a front sheet perimeter, a front sheet inside face, a front sheet outside face, an opening flap, and an opening flap perimeter. The distance between the opening flap perimeter and the front sheet perimeter is at least one inch. Moreover, the storage bag includes a back sheet that includes a back sheet perimeter, a back sheet inside face, a back sheet outside face, and a first pocket. The first pocket of the back sheet is oriented to receive the ends of the flexible rods.

This differs from the storage bag disclosed in *Schweitzer*. In particular, *Schweitzer* does not include at least two of the limitations disclosed in Applicant's claim 17. *Schweitzer* does not disclose a storage bag with a distance between the opening flap perimeter and the front sheet perimeter being at least one inch. The Examiner has equated the opening flap of Applicant's invention with a side panel (14) and the front sheet of Applicant's invention with a front panel (10) disclosed in *Schweitzer*. These elements (10 and 14) are not equivalent to Applicant's opening flap and front sheet. Even assuming, however, that they are equivalent, there is no limitation in *Schweitzer* that the perimeters of the side panel (14) and the panel (10) are one inch apart.

²⁸ *Wu* Col. 2, lines 7-31.

Moreover, *Schweitzer* does not disclose a storage bag with a first pocket of a back sheet that is oriented to receive the ends of flexible rods of a fast-erecting portable structure. The Examiner has equated a patch (32) with Applicant's first pocket and a back panel (12) of *Schweitzer* with Applicant's back sheet. These elements, however, are not equivalent in structure to Applicant's claim 17, and therefore, do not anticipate Applicant's claim 17. In particular, the patch (32) in *Schweitzer* forms a pouch to easily carry the storage bag when it is not in use for carrying a tennis racket.²⁹ This is not equivalent to forming a pocket to store flexible framing rods. Even assuming, however, that these elements disclosed in *Schweitzer* are equivalent to Applicant's limitations, it is not disclosed that the patch (32) and back panel (12) are oriented to receive the ends of a flexible framing rods of a fast-erecting portable structure. Therefore, Applicant's claim 17 is not anticipated by *Schweitzer*.

Regarding Applicant's claim 18, the Examiner has equated the side panels (14 and 16) to the Applicant's spacers. It is unclear from the Examiner's office action how the side panel (14) disclosed in *Schweitzer* can be equated to both the opening flap and the spacer of Applicant's invention. Either *Schweitzer* does not disclose a spacer or an opening flap because one element (14) in *Schweitzer* cannot be two different elements in Applicant's invention. Therefore, not every element of Applicant's claims is disclosed in *Schweitzer*, and thus, *Schweitzer* cannot anticipate Applicant's invention. Further, Applicant's claim 18 is a dependent claim based on independent claim 17 which is not anticipated by *Schweitzer*. As such, *Schweitzer* cannot anticipate the dependent claim 18.

The Examiner has equated the pocket (28) on the outside of the front panel (10) disclosed in *Schweitzer* with the second pocket connected to the inside face of the front sheet disclosed in Applicant's claim 19. First, the pocket (28) disclosed in *Schweitzer* is located on the outside of the front panel (10) as seen in Fig. 1, and the second pocket disclosed in Applicant's claim 19 is clearly connected to the inside of the front panel. These limitations are in direct opposition to each other and as such, do not function in the same way. Second, claim 19 is a dependent claim based on dependent claim 18 and independent claim 17 which are not anticipated by *Schweitzer*. Because claim 19 further limits non-anticipated claims 17 and 18, *Schweitzer* cannot anticipate Applicant's claim 19.

²⁹ *Schweitzer* Col. 2, lines 59-67.

2. Claims 21-23

The Examiner has indicated that Applicant's claims 21-23 are anticipated by *Schweitzer*. Because these are all dependent claims based on independent claim 17 which is not anticipated, claims 21-23 are also not anticipated by *Schweitzer*. Moreover, the elements listed in Applicant's claims 21-23 are not disclosed in *Schweitzer*. Applicant's claim 21 discloses that a zipper connects to the front sheet along the opening flap perimeter. The Examiner has equated this limitation to *Schweitzer*'s side panel (14) having a zipper (18). This is not the same structure as Applicant's claim 21. *Schweitzer*'s configuration includes a long zipper (18) attached between two side panels (14 and 16) to permit easy opening and closing of the receptacle.³⁰ This is different than a zipper connected to the front sheet along the opening flap perimeter as disclosed in Claim 21.

Moreover, with respect to claims 22 and 23, the Applicant's claims disclose that the storage bag is a circular or elongated circular disk. In contrast, as seen in Figs. 1 and 2, *Schweitzer* discloses a storage bag that is substantially triangular in shape. It has three distinct sides as opposed to being circular. Therefore, *Schweitzer* does not anticipate Applicant's claims 21-23.

Claim Rejections – 35 U.S.C. §103(a)

Applicant's Claims Are Not Rendered Obvious Under 35 U.S.C. §103 Over Any Of The Prior Art Patents

The Examiner has rejected Applicants' claims 6, 9, 26, and 27 under 35 U.S.C. §103. Applicant respectfully disagrees with the Examiner.

The Examiner has failed to establish a prima facie case of obviousness. When examining a patent application, the Examiner has the initial burden of factually supporting a prima facie conclusion of obviousness.³¹ Additionally, when rejecting claims under 35 U.S.C. §103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness.³² In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). Specifically, the

³⁰ *Schweitzer* Col. 2, lines 30-32 and Fig. 2.

³¹ See, *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

³² See, *In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988).

Examiner must (1) determine the scope and content of the prior art; (2) determine the differences between the prior art and the claims at issue; and (3) determine the level of ordinary skill in the art.³³ In addition to these factual determinations, the Examiner must also provide “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”³⁴ Moreover, the analysis supporting obviousness should be made explicit and should “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements” in the manner claimed.³⁵

Only if the Examiner makes a prima facie case of obviousness, does the burden shift to the Applicant for providing evidence of non-obviousness.³⁶ Obviousness is then determined based on the evidence as a whole and the persuasiveness of the arguments.³⁷ Here, the Applicant respectfully asserts that the Examiner has failed to meet the evidentiary burden.

Additionally, the cited prior art differs from the Applicant’s claims. Therefore, a person of ordinary skill in the art at the time of the invention would not have looked to the prior art cited by the Examiner to create Applicant’s claims. As such, the Applicant respectfully requests that the Examiner reconsider Applicant’s claims.

A. Claims 6 and 9 are rejected over *Kramer* or *Wu* as applied to claims 1 and 7-8 and further in view of U.S. Pat. No. 4,709,718 issued to *Nichols* (“*Nichols*”).

Here, the Applicant respectfully asserts that the Examiner has not made a prima facie case of obviousness because the person of ordinary skill in the art at the time of the invention would not have looked to *Kramer*, *Wu*, or *Nichols* to create Applicant’s invention.

1. Claim 6

The Examiner has indicated that *Kramer* and *Wu* disclose a portable structure as in Applicant’s claims except a fly and that *Nichols* discloses a portable structure comprising a fly (12) being supported by a fly framing rod (14) and being removably connected to a portable structure near the apex of an inverted u-shaped crossing of two flexible framing rods as in

³³ See, *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

³⁴ See, *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

³⁵ See, *KSR Int’l Co. v. Teleflex*, No. 04-1350, slip op. at 15 (U.S. 4-30-2007).

³⁶ See, *In re Oetiker*, 977 F.2d at 1445.

³⁷ See, *Id.*

Applicant's claim 6. As such, the Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention to combine *Kramer* or *Wu* with *Nichols* to create Applicant's claim 6. Applicant respectfully disagrees with the Examiner's position.

First, as disclosed above, *Kramer* does not disclose Applicant's claim 1. Because claim 6 is a dependent claim based on independent claim 1, *Kramer* also does not disclose Applicant's claim 6.³⁸

Second, it would not have been obvious to one of ordinary skill at the time of the invention because Applicant would not look to combine *Kramer* with *Nichols* to create his invention because *Nichols* teaches that the fly is removably connected to the end of the fly framing rod in contrast to Applicant's claim 6. In particular, *Nichols* states that a fabric sheet (12) is connected to the spar (14) by looping a lanyard (15) through a grommet (51) in the edge of the fabric sheet (12) and knotting the end of the lanyard (15).³⁹ This is in contrast to Applicant's invention where claim 6 specifically discloses that the fly is non-removably connected to the ends of the fly framing rod because in *Nichols* the fly can be removed from the spar by untying the lanyard and removing it from the grommet. Therefore, it would not have been obvious for the Applicant to look to *Kramer* as combined with *Nichols* to create his invention because the inventions do not operate in a similar way.

With regards to *Wu*, *Wu* also does not disclose Applicant's claim 1. Because claim 6 is a dependent claim based on independent claim 1, *Wu* also does not disclose Applicant's claim 6.

Further, it would not have been obvious to one of ordinary skill at the time of the invention because Applicant would not look to combine *Wu* with *Nichols* to create his invention. *Nichols* teaches that the fly is removably connected to the end of the fly framing rod. In particular, *Nichols* states that the fabric sheet (12) is connected to the spar (14) by looping a lanyard (15) through a grommet (51) in the edge of the fabric sheet (12) and knotting the end of the lanyard (15).⁴⁰ This is in contrast to Applicant's invention where claim 6 specifically discloses that the fly is non-removably connected to the ends of the fly framing rod because of the same reason listed above with respect to *Nichols* teaching that the

³⁸ See, *In re Johnson*, 589 F.2d 1070, 1080 (CCPA 1978).

³⁹ *Kramer* Col. 3, lines 37-41.

⁴⁰ *Kramer* Col. 3, lines 37-41.

fly can be removed from the spar. Therefore, it would not have been obvious for the Applicant to look to *Wu* as combined with *Nichols* to create his invention.

2. Claim 9

As in Applicant's claim 6, claim 9 is also not rendered obvious by *Kramer* as in view of *Nichols*. Again, as described above, *Kramer* does not disclose Applicant's claims 7 or 8 upon which claim 9 depends. As such, *Kramer* in view of *Nichols* does not render Applicant's claim 9 obvious.

Moreover, it would not have been obvious to one of ordinary skill at the time of the invention because Applicant would not look to combine *Kramer* with *Nichols* to create his invention. *Nichols* teaches that the fly is removably connected to the end of the fly framing rod. In particular, *Nichols* states that the fabric sheet (12) is connected to the spar (14) by looping a lanyard (15) through a grommet (51) in the edge of the fabric sheet (12) and knotting the end of the lanyard (15).⁴¹ This is in contrast to Applicant's invention where claim 9 specifically discloses that the fly is non-removably connected to the ends of the fly framing rod because the fly in *Nichols* can be removed from the spar. Therefore, it would not have been obvious for the Applicant to look to *Kramer* as combined with *Nichols* to create his invention.

With regards to *Wu*, *Wu* also does not disclose Applicant's claim 1. Because claim 9 is a dependent claim based on independent claim 1, *Wu* also does not disclose Applicant's claim 9.

Further, it would not have been obvious to one of ordinary skill at the time of the invention because Applicant would not look to combine *Wu* with *Nichols* to create his invention. *Nichols* teaches that the fly is removably connected to the end of the fly framing rod. In particular, *Nichols* states that the fabric sheet (12) is connected to the spar (14) by looping a lanyard (15) through a grommet (51) in the edge of the fabric sheet (12) and knotting the end of the lanyard (15).⁴² This is in contrast to Applicant's invention where claim 6 specifically discloses that the fly is non-removably connected to the ends of the fly framing rod because the fly in *Nichols* can be removed from the spar. Therefore, it would

⁴¹ *Kramer* Col. 3, lines 37-41.

⁴² *Kramer* Col. 3, lines 37-41.

not have been obvious for the Applicant to look to *Wu* as combined with *Nichols* to create his invention.

B. Claims 26 and 27 are rejected over *Kramer* or *Wu* in view of U.S. Pat. No. 7,040,333 issued to *Ransom* et al. (“*Ransom*”).

1. Claim 26

With respect to claim 26, the Examiner has indicated that it would have been obvious to one of ordinary skill in the art at the time of the invention to combine *Kramer* or *Wu* with *Ransom* to create Applicant’s claim 26. Applicant respectfully disagrees with the Examiner’s assertions.

As discussed above in detail with respect to claims 1, 7, and 8, *Kramer* and *Wu* do not disclose Applicant’s claim 26. Specifically, these references do not teach a fast-erecting portable structure where flexible framing rods cross at their respective apexes. Nor do they teach that the ends of the flexible skin are non-removably attached to the ends of the flexible framing rods. These are all non-analogous pieces of prior art, and therefore, a POSITA would not look to combine these to create Applicant’s invention.

Moreover, the container (60) disclosed in *Ransom* is not equivalent to the storage device disclosed in Applicant’s claim 26. The portable structure taught by *Ransom* is made of side panels (16) and frames (12) that are ovoid in shape.⁴³ This differs from Applicant’s flexible framing rods that are specifically described as an inverted u-shape.

Moreover, it is disclosed in *Ransom* that the container (60) is adapted to enclose and restrain the collapse enclosure or framework of the portable device disclosed in *Ransom*.⁴⁴ Therefore, it would be designed to store an ovoid shape structure. In contrast, the storage device disclosed in Applicant’s claim 26 is designed with an interior pocket that receives the coiled first flexible framing rod, the second flexible framing rod, and the flexible skin. The storage device in Applicant’s claim 26 would not be adapted to fit an ovoid shaped structure. Therefore, *Kramer* and *Wu* in view of *Ransom* do not render Applicant’s claim 26 obvious. A

⁴³ *Ransom* Col. 3, lines 41-46.

⁴⁴ *Ransom* Col. 5, lines 25-29.

person of ordinary skill in the art at the time of the invention would not look to any of these references to create Applicant's claim 26.

2. Claim 27

The only difference in Applicant's claim 27 and claim 26 is that claim 27 adds a further limitation of including a third flexible framing rod. As such, the same argument applies as to claim 26. Because the structures disclosed are different, a person of ordinary skill in the art would not look to combine *Kramer* or *Wu* with *Ransom* to create Applicant's claim 27.

Conclusion

Applicant believes he has addressed and responded to every point raised in the Examiner's present action. For the reasons stated above, Applicant respectfully requests reconsideration of his application.

Respectfully submitted,

Date: 09/08/2009

/Carey Brandt Anthony/
Carey Brandt Anthony, Reg. No. 55,022
Venable, Campillo, Logan & Meaney, P.C.
Attorneys for Applicant
1938 E. Osborn Road
Phoenix, Arizona 85016
(602) 631-9100